

THOUGHTS ABOUT BRIAN BOURKE

Preamble.

1. So, an Englishman and an Irishman go into a bar.
2. Then they get into a fight.
3. The Irishman punches the Englishman.
4. The Irishman was charged. But the Irishman has Brian Bourke on his plea.
5. The plea went for not much longer than when Brian told the Magistrate what happened.

“The English guy said something. And then 800 years of Irish History took over”.

6. That’s all that was said. And that’s when the bond was given.

Introduction.

7. I was a friend of the man who these chambers were named after.
8. But being his friend wasn’t a unique experience. You only needed to walk outside of chambers with Brian, to see how universally revered he was.
9. He was approached by everyone in the short distance it took to him to walk to court. And he spoke with them all the same way, whether they be lawyers, judges, or the man in the Commonwealth Bank.

Mentor.

10. Since being asked to come and say a few words, I’ve thought a lot about Brian and how good he was to me.
11. The key characteristics of Brian was that he took the time. And that’s something that I’ll be forever grateful for.
12. If you came to him for advice, he gave you his undivided attention with a laser focus.
13. And he gave that advice with clarity and authority. He never equivocated. He backed his judgment, and encouraged you to as well.
14. Within his room, the world made perfect sense. The challenge was taking the wisdom away and being able to use it yourself.

15. As the world turns a bit and the people who used to receive the *advice* have the offices and are now *giving* the advice, we need to remember that taking the time is the greatest gift we can give.

Other than work.

16. I think Brian had a fundamental decency about him.
17. When my first child was born, he congratulated me, and asked me to come up chambers. And when I did, he had paperwork up there.
18. I asked him what it was, and he said we're signing Riley up to be an MCC member. His membership is about to be granted now, and when I'm sitting at the ground watching something, it will be because of Brian's generosity.
19. He took the time.
20. I saw him once at a Leonard Cohen concert in the last few years of his life. He just couldn't understand how someone that age could still be entertaining people.
21. I said it's the same for you mate.

Brian as a Barrister.

22. What set Brian apart from everyone else was a complete lack of pretentiousness.
23. We are surrounded and seduced by the trappings of this profession. Long words, money, position, the entitlement.
24. Brian was beyond all of that. Earned respect by doing the job properly. Spoke plainly and without pretention.
25. And he reached people.
26. Did all of that with an innate understanding, for the plight of those on the margins, or on the downside of advantage. There is a lesson in that for all of us.
27. For me it was never greed that had him take multiple briefs, as he joked it was. It was just never about the money. He didn't need the money and did so much pro bono work.
28. That he was always accommodated, was a function of the respect he created through a lifetime of goodwill, built on working honestly, and doing it the right way.

Multiple Briefs.

29. But the overlapping nature of his briefs always made for the best stories.
30. Like the time he wandered into a heaving courtroom in the Court of Criminal Appeals, dealing with testy subject matter.
31. The only problem was, he was a day early. And it wasn't his matter.
32. Justice Crockett sees Brian and says; "Mr. Bourke, your matter is listed it tomorrow. Would you like it mentioned?"
33. Brian says he would. And Justice Crockett asks him, so what's it all about, and Brian says well I just thought it was a bit high.
34. Crocket replies, "I thought that's what you might say."
35. The next day the appeal was granted. Very quickly.

As Brian's Junior.

36. The first time he asked me to junior him in a trial, I said yes even though I had a holiday booked the week before.
37. But I told him about it, and he said take the holiday, and junior in the trial which was an arson. He said he'd see me on day 1.
38. I told him I'd ring him every day. He said; "Don't ring me every day".
39. I promised to get it all ready for him before I went away. And I did. I wrote a beautiful colour coded chronology, and a draft closing address with the case theory.
40. I put them in an A4 envelope and took it to him before he went away. Signed sealed and delivered. He put it on his desk.
41. When I came back, I walked into his room, day 1 of the trial, and I see my envelope. Exactly as I had left it.
42. Brian took the time, but he took the time to do the work himself.

Crown v. Pace & Conduit.

43. I was asked to junior him in a manslaughter trial, which remains perhaps my fondest memory in this job. He said it was going to be his last trial.
44. I never got to see the closing address he might have prepared, because thanks to the peerless work of Mick O'Connell a no case before Justice Lasry prevailed.

45. But I got to see an opening address. I think Mick and I both recognized instantly that we were hearing something that would be remembered.
46. The case was about two carers of profoundly disabled men from a home. And on an outing to the local football, one of those men that they were supervising wandered off into the changerooms and drank from a water bottle as he was prone to do.
47. The water bottle contained liniment, and he tragically died.
48. So, the case was about criminal negligence.
49. Around come the openings.
50. Now, I have had the misfortune of following Mick O'Connell before on a night such as this a few years ago. I rather like to think it's much like what happens when the Rolling Stones decide they are going to play *before* the support act.
51. I don't think Mick would mind me saying it but what Brian did in those next few minutes were just unforgettable.
52. And it summed up, virtually everything about him:
53. He said:
- “... and it's pretty live in this case, as to whether you think there's any criminal negligence, and if it's criminal, that enables you to say, that for your vote, and you've all got to vote the same, as his Honour says, that you would stamp these two people as killers. That's the word. Have a look at the presentment. They're charged that they killed somebody.*
- There are not many people in this world who can kill people, I don't care whether it's murder or manslaughter, or what it is. But there's not many people, and you might well think at the end of the day when you've heard this evidence, all these people did when the gravity of the situation was brought home to them, they did everything possible and human in their capacity to deal with it.”*
54. There was this soaring like authority about these words. The indictment. Seizing on the word “killed” and saying that the Crown were going to “stamp these two people as killers”.
55. Talk about a cut through moment.
56. But if it's true that we all find a way to put a lot of ourselves into these cases, the same was true for Brian. Because there he was speaking about the humanity of two people doing all that they could for the Deceased.
57. He told everyone that was his last trial.

58. Then about a year or so before he died, I saw him robed over in the County Court, and I said “Brian what are you up to?”.
59. He said; “A special hearing” ... “ever done one of those before?”. There he was acting for a young kid, who he thought was worthy of a bit of help.
60. I’ve tried to take piece of Brian’s opening around with me, in everything I’ve done from that time to this.
61. But the trouble is it always ends the same way. Because I’m not Brian Bourke. There’s only one Brian Bourke.
62. And I was lucky enough to be his friend. I’m glad that these chambers were named after him, and that I got to speak a little bit about him tonight.
63. Thanks for listening.

GLENN CASEMENT

21st OCTOBER 2022